

May 23, 1984

RECORDATION NO. Filed 1425

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

JUN 1 1984 -3 21 PM

INTERSTATE COMMERCE COMMISSION

Dear Sir or Madam:

I have enclosed and one counterpart execution copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Mortgage and Security Agreement dated May 23, 1984.

The names and addresses of the parties to the documents are as follows:

Kentucky and Tennessee Railway, Inc.
c/o Darrell Dwayne King
448 Park Road
Stearns Kentucky 42647 (Mortgagor/Debtor)

Citizens Union National Bank and Trust Company Citizens Bank Square Vine and Upper Streets Lexington, Kentucky 40507 (Mortgagee/Secured Party)

A description of the equipment covered by the document follows:

- (a) One Model 539 diesel locomotive manufactured in 1943 by American Locomotive Company ("ALCO") with serial number 70184 and Kentucky and Tennessee Railway number 101, with former Road No. D&RGW 110.
- (b) One Model 539 diesel locomotive manufactured in 1944 by ALCO with serial number 72051 and Kentucky and Tennessee Railway Number 102, with former Road No. D&RGW 118.
- (c) One Model 539 diesel locomotive, manufactured in 1944 by ALCO, with serial number 72052 and Kentucky and Tennessee Railway number 103, with former Road No. D&RGW 119.

(d) One Model 539 diesel locomotive manfactured in 1949 by ALCO, with serial number 77816 and Kentucky and Tennessee Railway number 104, with former Road No. D&G 3028.

A fee of \$50 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to Citizens Union National Bank and Trust Comapany, Citizens Bank Square, Vine and Upper Streets, Lexington, Kentucky 40507, Attention: Mr. John Penn.

A short summary of the document to appear in the index follows:

Mortgage and Security Agreement between Kentucky and Tennessee Railway, Inc., c/o Darrell Dwayne King, 448 Park Road, Stearns, Kentucky 42647; and Citizens Union National Bank and Trust Company, Citizens Bank Square, Vine and Upper Streets, Lexington, Kentucky 40507 dated May 23, 1984, and covering four model 539 diesel locomitives.

Very truly yours,

CITIZENS UNION NATIONAL BANK AND TRUST COMPANY

1r. John Penn

Vice-President

### Interstate Commerce Commission Washington, D.C. 20423

6/1/84

OFFICE OF THE SECRETARY

John Penn

Citizens Union Natl. Bank & Trust Co. Citizens Bank Square Vine & Upper Streets Lexington, Kentucky 40507

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 6/1/84 at 3:25pm and assigned rerecordation number(s).

Sincerely yours

Secretary

Enclosure(s)

RECORDATION NO.....Filed 1425

#### KENTUCKY AND TENNESSEE RAILWAY, INC MORTGAGE AND SECURITY AGREEMENT

JUN 1 1984 - 3 23 PM

Real Property, Improvements, Inventory, INTERSTATE COMMERCE COMMISSION Accounts Receivable, Contract Rights, Documents, General Intangibles, Chattel Paper, Instruments, Leases, Equipment, Machinery, Fixtures and Goods

THIS MORTGAGE AND SECURITY AGREEMENT is made and entered into this 23 day of May, 1984, by and between KENTUCKY AND TENNESSEE RAILWAY, INC. ("K&T"), a Kentucky corporation (hereinafter referred to as the "Debtor"), and CITIZENS UNION NATIONAL BANK AND TRUST COMPANY (hereinafter called "Bank"), a national banking association, with its principal place of business at Citizens Bank Square, Vine and Upper Streets, Lexington, Fayette County, Kentucky 40507.

#### IT IS AGREED BY THE PARTIES AS FOLLOWS:

- 1. <u>Collateral</u>. For value received, and to secure the "Obligations" of Debtor described in Section 2 of this Agreement, Debtor hereby sells, assigns and transfers in fee simple the following described real and personal property to Bank (all of which is sometimes hereinafter referred to collectively as the "Collateral"), to-wit:
- A. All of the real estate owned by the Debtor where ever situated, including, but not limited to, the real estate located in McCreary County, Kentucky, more particularly described by <a href="Exhibit "A" attached hereto and incorporated herein by reference (which real property is sometimes">Exhibit "A"</a>

hereinafter referred to as the "Premises"); together with all the Debtor's interest in lands, minerals, mining and other rights in such real estate and easements, rights-of-way, licenses, privileges and appurtenances thereunto belonging, and all rents, revenues, issues and profits therefrom; together with all buildings, structures and improvements now or hereafter erected on the Premises and all fixtures, machinery and apparatus of every kind and nature whatsoever, now or hereafter affixed to the Premises.

All existing and future "Accounts" of Debtor, В. as defined in the Uniform Commercial Code of Kentucky, and all Debtor's existing and future accounts receivable, and also including, but not in any way limited to [i] all rights of Debtor to payment for goods sold or leased or services rendered, and all other sums whatsoever owed to Debtor, now existing, hereafter accruing or arising and whenever and wherever acquired or arising, whether or not evidenced by a note or other instruments, and including all goods or inventory in transit and/or returned to, or repossessed by, Debtor and all claims against common carriers for goods and inventory lost in transit, [ii] all premiums paid by Debtor for insurance and the refunds or right to refund of any of the same, whether or not covering any of the Collateral, and [iii] all proceeds payable under insurance policies covering any or all of the Collateral (all of the property and rights

listed above are collectively referred to herein as the "Accounts Receivable").

- C. All of Debtor's "Inventory," being defined as all goods, merchandise, raw materials, and other kinds and types of tangible personal property held for sale or lease, now in existence or hereafter acquired or produced (this property being referred to hereinafter as "Inventory"); and
- D. All of Debtor's cash, contract rights, general intangibles, chattel paper, instruments and documents now in existence or hereafter acquired (collectively referred to herein as the "Contracts"); and
- E. All of the equipment of Debtor described in <a href="Exhibit" "B" attached hereto and made a part hereof, and all accessions thereto and replacements therefor; and</a>
- F. The proceeds and products of all the foregoing.
- 2. Obligations Secured. This Mortgage and Security Agreement is made as collateral security for and the security interest granted in the Collateral secures the following obligations (hereinafter referred to as the "Obligations") [a] a Note payable to the order of Bank of even date herewith in the original, face principal amount of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000) made by Debtor, Railum Inc. ("Railum") and Lumber King, Inc. ("Lumber King"), all Kentucky corporations (which note, together with any extensions and renewals thereof, or

substitutions or replacements therefor, are collectively referred to hereinafter as the "Note") and [b] all other liabilities, obligations, covenants and agreements of whatever kind of Debtor and/or Railum and/or Lumber King to Bank, whether for indebtedness or pursuant to the terms of any security instrument, whether created directly or acquired by Bank by assignment or otherwise, whether now existing, or hereafter created, arising or acquired, absolute or contingent, joint or several, due or to become due, and including (but not limited to) future advances and [c] all costs incurred by Bank to obtain, preserve, perfect and enforce this security interest, to collect the Obligations enumerated in this Section 2, and to maintain and preserve the Collateral, including without limitation taxes, assessments, insurance premiums, repairs, reasonably attorneys' fees and legal expenses, rent, storage costs and expenses of collection and sale.

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- 3. <u>Warranties</u>. Debtor represents and warrants to Bank that:
- A. The Debtor is well seized of the Premises, in fee simple, and has good right and full power to grant, bargain, sell, convey, mortgage and warrant the same. The Premises are free from all liens and encumbrances whatsoever, excepting only the lien of ad valorem taxes not yet due and payable, easements and leases of public record and properly indexed, restrictions and zoning laws affecting

said property, if any, and the lien of the mortgage securing indebtedness to Citizens Fidelity Bank and Trust Company, recorded at Mortgage, Book 35, Page 706, in the office of the McCreary County, Kentucky, Court Clerk. The Debtor warrants and will defend the said Premises, with the privileges and appurtenances thereunto belonging, to the Bank, its successors and assigns, forever against all claims and demands whatsoever adverse to the interest of the Bank, at the Debtor's sole expense.

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- B. Debtor is the owner of the Collateral free of all liens, security interests and other encumbrances as of the date hereof, except the security interest granted hereby and the encumbrances described in Section 3A.
- C. Debtor has the right to enter into this Mortgage and Security Agreement.
- D. The Collateral is used and will be used primarily for business purposes, and all the collateral shall be located in McCreary County, Kentucky, and at Debtor's office in Stearns, McCreary County, Kentucky, which office is: [i] the location where all the records concerning the Accounts Receivable and Contracts shall be located while the Note remains unpaid, [ii] Debtor's residence and principal office and place of business, and [iii] Debtor's registered office for the receipt of legal process. At no time during the five (5) years prior to the date hereof has Debtor maintained any other locations, where any substantial

portion of the Collateral has been located where any accounting or other records have been located, or where the registered office of Debtor and its registered agent for service of process have been located.

- E. The schedule of Debtor's real property attached hereto as Exhibit A accurately describes all of the real property owned by Debtor, and the schedule of Debtor's equipment attached hereto as Exhibit B accurately describes the equipment listed therein.
- F. All contracts, agreements and leases to which Debtor is a party, material to the operations, business or financial condition of Debtor, are currently in full force and effect in accordance with their terms, and there exists no default thereunder or event or condition which with the passage of time or giving of notice would give rise to a default thereunder.
- 4. Affirmative Covenants. Debtor agrees with Bank that Debtor:
- A. Will pay the indebtedness to Citizens Fidelity Bank and Trust Company described in Section 3A hereof within one (1) business day hereafter.
- B. Will defend the Collateral against the claims and demands of all persons.
- C. Will insure the Premises and the Collateral, for the benefit of the Bank (to whom loss shall be payable) in such amounts, in such companies, and against such risks

and with only such deductible(s) and co-insurance provisions as may be satisfactory to the Bank, in its sole discretion, from time to time. If Debtor fails to obtain such insurance, the Bank shall have the right to obtain same at Debtor's expense, which shall bear interest at the default rate specified in the Note and shall be due on demand of Bank and shall nevertheless constitute a default hereunder. Debtor hereby assigns to the Bank all rights to receive the proceeds of such insurance not exceeding the unpaid balance of all liabilities and obligations of whatever kind of Debtor to the Bank, directs any insurer to pay all proceeds of such insurance directly to the Bank, without further authorization, and authorizes the Bank as Debtor's irrevocaattorney-in-fact, to [i] compromise, settle and/or receipt for, on behalf of Debtor, any and all claims under all such insurance and [ii] obtain such proceeds and endorse and negotiate any draft for such proceeds and apply the same liabilities and obligations secured hereunder. to the Debtor shall deliver the original or a certificate of all of such insurance policies to the Bank, with the Bank named as an insured pursuant to a standard lender's endorsement, naming the Bank as loss-payee, with full waiver of subrogation against any insured or loss-payee, and which shall provide that [i] same may not be cancelled or modified except after thirty (30) days' prior written notice from the insurance company to the Bank, and [ii] no act or default of

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Debtor or any other person shall affect the right of Bank to recover under such policies of insurance in case of loss or damage. The Debtor shall deliver to Bank proof of renewals and payments of premiums therefor for all such policies in advance of the expiration of any such policy or due-date of the premiums therefor, as the case may be. Debtor hereby authorizes Bank, as Debtor's irrevocable attorney-in-fact to cancel any such insurance policy upon the occurrence of any default in payment of the Note or any of the other any default in or breach Obligations, or representation or warranty by Debtor under the provisions of this Mortgage and Security Agreement, and to obtain and receive a refund of the unearned insurance premium(s) from any policies maintained by or for Debtor, which shall be applied against the liabilities and obligations of Debtor secured hereby.

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- D. Will, at all times, at its own expense, carry and maintain or cause to be carried and maintained public liability insurance at least in amounts and against risks customarily insured against by railroad companies similarly situated.
- E. Will keep the Premises and the Collateral in good condition and repair, and will permit Bank and its agents to inspect the Collateral and the books and records of Debtor at any time and from time to time.

- F. Will not permit any part of the Collateral or any of the records concerning same to be removed from the locations referred to above in Section 3E hereof and will not move or change its principal place of business or its registered office for its registered agent without Bank's prior written consent.
- Will advise the Bank in writing, at least thirty (30) days prior thereto, of any change in Debtor's place of business or the opening of any new place of business or any change in Debtor's name or the adoption by it of a trade name, assumed name or fictitious name and will execute and deliver to the Bank (or the Bank may execute and deliver the same as Debtor's irrevocable attorney-in-fact) new UCC-1 Financing Statements describing the same Collaterspecified herein for recordation where necessary or appropriate as determined in Bank's sole discretion to perfect and/or continue perfected the Bank's security interest in the Collateral based upon such new place(s) of business and/or change in or adoption of name, and Debtor will pay all filing and recording fees and filing and recording taxes in connection with the filing and/or recordation of such Financing Statements.
- H. Will pay the Note and all other indebtedness of the Debtor to Bank in accordance with their respective terms.

- I. Will comply in all respects with the Note and with all of the instruments securing the Note.
- J. Will, promptly upon request of Bank made not more frequently than quarterly, send to Bank a schedule of accounts receivable reflecting for each account the date of its invoice and amount due as of the date of such schedule.
- K. Will, in using the equipment, machinery and fixtures constituting a part of the Collateral, comply with all applicable federal, state and local statutes, laws, rules and regulations.
- L. Will pay all ad valorem property taxes which constitute or may constitute a lien against the Premises or against any of the Collateral, prior to the date when penalties or interest would attach to such taxes.
- M. Will, at all times, keep, observe and perform all of the terms, covenants and conditions of the Agreements upon the part of Debtor thereunder to be kept, observed and performed and shall do all things necessary to keep unimpaired the Debtor's rights in and to the Agreements and the Premises.
- 5. <u>Negative Covenants</u>. Debtor agrees with the Bank that it will not without the prior written consent of Bank:
- A. Permit any liens or security interest, other than Bank's security interest granted herein, the encumbrances referenced in Section 3C above and the lien of ad

valorem property taxes not yet due and payable, to attach to any part of the Premises or any of the Collateral.

- B. Permit any part of the Premises or any of the Collateral to be levied upon under any legal process;
- C. Dispose of any part of the Premises or any of the Collateral without the prior written consent of Bank, other than selling Inventory and collecting Accounts Receivable, all in the ordinary course of business;
- D. Permit anything to be done that may impair the value of any part of the Premises or any of the Collateral or the security intended to be afforded by this Mortgage and Security Agreement;
- E. Permit any of the Collateral to become an accession or improvement to other goods in which Bank does not hold a security interest;
- F. Waive, compromise or discount any Accounts Receivable, without the prior written approval of the Bank, except for ordinary trade discounts and allowances for payment within thirty (30) days of the date of invoice or billing;
- G. Voluntarily terminate or materially breach any contract, agreement or lease material to the operations, business or financial condition of Debtor, and will inform the Bank promptly after the occurrence of any such termination or breach of the details of same.

- H. Allow any mechanic's materialmen's or other lien to be filed or asserted against the Premises or any part thereof if it shall fail to cure and remove such mechanic's, materialmen's or other lien from the record within fifteen (15) days after the Bank has sent the Debtor written notice requiring such cure and removal.
- Further Assurances. The Debtor agrees that from time to time, at the expense of the Debtor, the Debtor will promptly execute and deliver all further instruments and documents, and take all further action that may be necessary or desirable, in the sole discretion of Bank, or that the Bank may request, in order to perfect and protect the mortgage and security interests granted or purported to be granted hereby or to enable the Bank to exercise and enforce its rights and remedies hereunder with respect to the Premises or the Collateral or any part thereof. Without limiting the generality of the foregoing, the Debtor will execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as the Bank may request, in its sole discretion, in order to perfect and preserve the mortgage and security interest granted or purported to be granted hereby.
- 7. <u>Bank as Attorney in Fact</u>. Debtor hereby irrevocably appoints Bank as Debtor's attorney-in-fact to do all acts and things which Bank may deem necessary or appropriate

to perfect and continue perfected the mortgage and security interests created by this Mortgage and Security Agreement and to protect the Premises and the Collateral, including (but not limited to) the execution in Debtor's name as its attorney-in-fact of UCC-l and other Financing Statements covering the Collateral and recordation of same wherever Bank deems appropriate.

Accounts Receivable. Bank shall have the right to notify account debtors obligated on any or all of Debtor's Accounts Receivable to make payments thereof directly to Bank, and to take control of all proceeds of any such Accounts Receivable, which rights Bank may exercise at any time and from time to time, whether or not Debtor is then in default hereunder or under the Note or Debtor was theretofore making collections thereon. Until such time as Bank elects to exercise such rights, by giving Debtor written notice thereof, Debtor is authorized, as Bank's agent, to collect and enforce said Accounts Receivable. The costs of such collection and enforcement, including attorneys' fees and out-of-pocket expenses, shall be borne solely by Debtor, whether the same are incurred by Bank or Debtor in the collection of such Accounts Receivable. To facilitate direct collection of such Accounts Receivable, Debtor hereby grants Bank the right and authorizes Bank to take over Debtor's post office boxes or to make other arrangements suitable to Bank so that it may receive Debtor's mail and further grants Bank the right to open all Debtor's mail as Debtor's attorney-in-fact.

Debtor shall execute promptly and deliver to Bank all instruments necessary or appropriate to further the Bank's exercise of the rights and powers granted it in this Section or to further perfect any lien granted by this Mortgage and Security Agreement.

- 9. Promissory Notes, Etc. If any of Debtor's Accounts Receivable shall be evidenced by promissory notes, trade acceptances, chattel paper or other instruments for the payment of money, Debtor upon request of Bank will immediately deliver the same to Bank, appropriately endorsed to Bank's order and also authorizes Bank to endorse same on Debtor's behalf as Debtor's attorney-in-fact and, regardless of the form of such endorsement, Debtor hereby waives presentment, demand, notice of dishonor, protest and notice of protest and all other notices with respect thereto.
- 10. Records. The Debtor will at all times keep accurate and complete records of the transactions with respect to the Inventory, Accounts Receivable and Contracts, and the Bank, or any of its agents, shall have the right to call at the Borrower's place or places of business at intervals to be determined by the Bank, and to inspect, audit, and make extracts from the books, records, and other data relating to said Inventory, Accounts Receivable and

Contracts or to any other transactions between the parties thereto.

- 11. Condemnation. In the event any proceedings shall be instituted (or threatened) to condemn the Premises or any part thereof, or take the same for public use under the power of eminent domain, the Debtor shall immediately give written notice thereof to the Bank. All proceeds from any such condemnation or taking shall be paid directly to the Bank and applied first to the payment of the Bank's expenses and costs in connection with such proceedings, including appraisers' and attorneys' fees (to the extent allowed by law), and then to the payment or reduction of the Notes hereby secured or to the restoration or repair of such improvements as may be damaged or destroyed as a result of such proceedings, as the Bank and the Debtor jointly determine.
- 12. Events of Default. Each of the following shall be deemed an "Event of Default" hereunder:
- A. If any default occurs in the performance of any of the Obligations described in Section 2 of this Mortgage and Security Agreement, strictly in accordance with their respective terms; or
- B. If Debtor, Railum or Lumber King shall fail to pay any amount due and payable on any of the Obligations described in Section 2 of this Mortgage and Security Agreement, including, without limitation, all principal of and

interest on the Note, strictly in accordance with their respective terms; or

- C. If Debtor shall fail to comply fully with any provision of this Mortgage and Security Agreement and the same is not cured within ten (10) days after Bank shall have given Debtor written notice thereof; or
- D. If any warranties or representations made herein by Debtor or in any certificate, instrument, agreement or other writing now or hereafter delivered by Debtor, Railum or Lumber King to Bank shall prove untrue or misleading.
- 13. Remedies With Respect to Collateral. Upon the occurrence of any Event of Default hereunder, under the Note, or under the other instruments securing the Note, or any default in or breach of any representation, warranty or agreement by Debtor under the terms and provisions of this Mortgage and Security Agreement, the Bank shall have all rights and remedies, in and against the Collateral and otherwise, available under the laws of the Commonwealth of Kentucky (or such other state where any part of the Collateral may be located, if applicable) and all other applicable laws and all rights provided herein, in the Note and in all other instruments securing the Note and/or other liabilities or obligations of Debtor to Bank, or in any other applicable security or loan agreement, all of which rights and remedies shall, to the full extent permitted by law, be cumulative.

In addition, Bank may require Debtor, at Debtor's expense, to assemble the Collateral and make it available to Bank at the place or places to be designated by Bank, which is or are reasonably convenient to Bank and Debtor. At Bank's sole option and without any liability to Debtor, Bank may make or have made any of Debtor's equipment, machinery and fixtures inoperable. Following an Event of Default and the Bank dispossessing Debtor from its real property pursuant to this Mortgage and Security Agreement, the Bank shall also have the right to use and operate any and all of the Debtor's equipment, machinery, fixtures and other Collateral for the purpose of generating profits for the payment of the indebtedness hereby secured, and Bank may engage lessees and sublessees, and assignees of any of Debtor's property, for such purpose, providing that Bank will account to Debtor for all revenues and profits from such actions. The Bank shall have the right to sell the Collateral at public or private sale. Debtor will pay, as part of the indebtedness hereby secured, all amounts, including (but not limited to) Bank's attorneys', accountants' and appraisers' fees, with interest thereon at the rate provided in the Note for overdue installments, paid by Bank [i] for taxes, levies, insurance, repairs to, or maintenance of, the Collateral, and [ii] in taking possession of, disposing of, or preserving the Collateral. The requirement of reasonable notice of the time and place of disposition of Collateral by Bank shall be conclusively met if such notice is mailed, postage prepaid, to Debtor's address specified in Section 18 hereof at least ten (10) days before the time of the sale or disposition. Bank may bid upon and purchase any or all of the Collateral at any public sale thereof, free from any right of redemption of Debtor. Bank may dispose of all or any part of the Collateral at one or more times and from time to time and in one or more lots or parcels, and upon such terms and conditions, including a credit sale, as it determines in its sole discretion. The Bank shall apply the net proceeds of any such disposition of the Collateral or any part thereof, after deducting all costs incurred in connection therewith, or incidental to the holding, preparing for sale, in whole or in part, of the Collateral, including Bank's attorneys', accountants' and appraisers' fees, first to the Note and then in such order as Bank may elect to the other liabilities and obligations of Debtor secured hereunder, and any remaining proceeds shall be paid to Debtor or other party entitled thereto. To the extent permitted by law, Debtor waives all rights of redemption in or with respect to the Collateral.

14. Remedies With Respect to Real Property. Upon the occurrence of any Event of Default under the Note, or the other instruments securing the Notes, or any default in or breach of any representation, warranty or agreement by Debtor under the terms and provisions of this Mortgage and

Security Agreement, the Bank shall have, in addition to any other right or remedy which the Bank may now or hereafter have, at law or in equity, and not by way of limitation, the right and power to exercise any or all, or any combination of, the following remedies:

- A. To declare the entire unpaid principal balance of, and all interest on, the Note and all other Obligations secured hereby to be due and payable immediately and to proceed to enforce the collection of such indebtedness and all charges and costs permitted by law, including attorneys' fees;
- B. To foreclose upon this Mortgage and Security Agreement and the lien hereof;
- C. To sell the Premises according to law as an entirety or in separate parcels;
- D. To apply without notice (same being hereby expressly waived by the Debtor) for the appointment of a receiver to collect the revenues and profits of said Premises and to preserve the Premises as security hereunder as a matter of right, either before or after any foreclosure sale, without regard to the value of said Premises as security for the amount due the Bank; the revenues, issues and profits of the Premises, in any such event, having heretofore been assigned to the Bank as additional security for the payment of the indebtedness;

E. To enter upon and take possession of the said Premises, without application to any court and with the irrevocable consent of the Debtor as evidenced by the execution of this Mortgage and Security Agreement, and to collect the revenues, issues and profits thereof, all of which are hereby assigned by Debtor to Bank; and without the appointment of any receiver or application being made therefor, to manage, promote and/or operate the said Premises, either in the Debtor's name or the Bank's name, by whatever means the Bank may elect, and to receive all revenues, issues and profits therefrom and to apply the same, after payment of all charges and expenses deemed by the Bank to be necessary, to the indebtedness hereby secured.

All the foregoing rights and powers are effective and may be enforced by the Bank, either in conjunction with or without any action to foreclose this Mortgage and Security Agreement, and without applying at any time for a receiver for the said Premises. Failure of the Bank to exercise any of its options or remedies provided for herein or by law or equity in the event of the occurrence of an Event of Default or a violation of any of the warranties, covenants and agreements herein contained by the Debtor shall not constitute a waiver of the Bank's right to exercise such options or remedies.

- Agreement secures all future advances that may be made at any time by Bank to Debtor; provided however, that the maximum additional indebtedness secured hereby shall not exceed One Million Dollars (\$1,000,000.00). There is included within the term "Collateral", as used herein, all other property and all interests therein of any kind acquired by Debtor at any time after the date hereof meeting or falling within the general description of the Collateral set forth herein and also the proceeds and products thereof.
- 16. Governing Law. The laws of the Commonwealth of Kentucky shall govern the construction of this Mortgage and Security Agreement and the rights, remedies and duties of the parties hereto, unless the laws of the state where the Collateral or part thereof is situated dictate that the laws of such other state shall govern.
- 17. Severability. In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Mortgage and Security Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 18. Notices. All notices, elections, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been given at the time

delivered or deposited in the United States mails, certified or registered and postage prepaid, addressed to the parties as follows (or to such other person or place of which any party hereto shall have given written notice to the other):

If to the Bank: Citizens Union National Bank

and Trust Company Citizens Bank Square Vine and Upper Streets Lexington, Kentucky 40507

Attention: Commercial Lending Division

If to the Debtor: Kentucky and Tennessee

Railway, Inc. P.O. Box 368

Stearns, Kentucky 42647

Debtor shall pay to the Bank all sums due the Bank under the Note and the interest thereon, in the manner and at the times mentioned in said Note, together with any and all other sums due from the Debtor to the Bank under this Mortgage and Security Agreement, or otherwise, and shall fully keep and perform the terms, covenants, conditions and agreements under this Mortgage and Security Agreement, or otherwise due the Bank, then this Mortgage and Security Agreement, or otherwise due the Bank, then this Mortgage and Security Agreement, and the estate and security interests granted hereby shall cease and be void, and said Mortgage and Security Agreement shall thereupon be released by the Bank at the cost and expense of the Debtor.

#### 20. Miscellaneous.

A. This Mortgage and Security Agreement shall be binding upon the Debtor and its respective successors and assigns and shall inure to the benefit of Bank and its successors and assigns.

B. Time shall be of the essence in the performance of all Debtor's obligations under this Mortgage and Security Agreement.

C. The several captions, headings, sections and subsections of this Agreement are inserted for convenience only and shall be ignored in interpreting the provisions of this Agreement.

D. This Agreement may be modified only by written agreement executed by Bank and Debtor.

21. Maturity Date. The Note is due on April 30, 1985.

IN TESTIMONY WHEREOF, witness the signatures of the parties hereto as of the day, month and year first above written.

KENTUCKY AND TENNESSEE RAILWAY, INC.

the Vice Mesident Title Primant

("Debtor")

CITIZENS UNION NATIONAL BANK AND TRUST COMPANY

				("Bank"	')
COMMONWEALTH OF KENTUCKY	) ) SS:				
COUNTY OF JEFFERSON	) SS: )				
	me the Cresi	corporat	day of Kentrion,	of May, ucky and on behal	1984, by Tennes
My commission e	xpires	:: <u>10-2</u>	5-5	6	·
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COMMONWEALTH OF KENTUCKY	)				
COUNTY OF JEFFERSON	) ) SS: )				
The foregoing and acknowledged before, as National Bank and Trust Ction, on behalf of the asset	me t Vice Compan	his 23 Hesider y, a nati	day of	f May, Citizer	1984, by ns Unior
My commission e	xpires	s: 20 05	56		•
[SEAL]			-2		/

This instrument prepared by:

Arthur A. Rouse

WYATT, TARRANT & COMBS

Citizens Plaza

Louisville, Kentucky 40202

## EXHIBIT A TO K&T MORTGAGE AND SECURITY AGREEMENT

A railroad extending from a connection with the Cincinnati. New Orleans and Texas Pacific Railroad, at Stearns, McCreary County, Kentucky in a westerly direction down and along Coopers Branch to its intersection with Paunch Creek and then still in a westerly direction down and along said Paunch Creek to its intersection with the Big South Fork of Cumberland River a distance of four and three-quarter Thence in a northerly direction down and along said Big South Fork of Cumberland River a distance of three miles to the mouth of Rock Creek. Thence in a westerly direction up and along said Rock Creek to railroad survey station 605+00 located opposite the mouth of White Oak Creek a distance of three and seventyone hundredth miles in all eleven and forty-six hundredth miles.

A branch line of the Kentucky and Tennessee Railway extending from its connection with the main line at main line survey station 601+70 at White Oak Junction in a westerly direction up and along White Oak Creek to railroad survey station 675+00 located at Cooperative a distance of one and thirty-nine hundredth miles.

Together with all rights-of-way along the line of this railroad and branch line. (The right-of-way is 100 feet along most of the track.)

SOURCE OF TITLE: A deed from Stearns Coal & Lumber Company to the Kentucky and Tennessee Railway dated January 29, 1903 and recorded in Deed Book 39, page

340 in the Whitley County Court Clerk's Office; a deed from Stearns Coal and Lumber Company to the Kentucky and Tennessee Railway dated September 5, 1925 and recorded in Deed Book 16, page 620 in the McCreary County Court Clerk's Office; a deed from Rock Creek Coal & Lumber Company by A. J. Cress, Commissioner to the Kentucky and Tennessee Railway dated September 19, 1905 and recorded in Commissioner's Book 2, page 514 in the Wayne County Court Clerk's Office; a deed from J. H. Keeney and Timothy Cockhill by Sallie E. Sandusky, Commissioner to the Kentucky and Tennessee Railway, dated March 25, 1907 and recorded in Commissioner's Book 2, page 598 in the Wayne County Court Clerk's Office; a deed from John Foster and Sarah Foster, his wife to the Kentucky and Tennessee Railway dated August 18, 1906 and recorded in Deed Book 40, page 170 in the Wayne County Court Clerk's Office and a deed from Stearns Coal & Lumber Company to the Kentucky and Tennessee Railway dated September 9, 1925 and recorded in Deed Book 18, page 16 in the McCreary County Court Clerk's Office.

# EXHIBIT B TO K&T MORTGAGE AND SECURITY AGREEMENT

- (a) One diesel locomotive manufactured in 1943 by American Locomotive Company ("ALCO") with serial number 70184 and Kentucky and Tennessee Railway number 101.
- (b) One diesel locomotive manufactured in 1944 by ALCO with serial number 72051 and Kentucky and Tennessee Railway number 102.
- (c) One diesel locomotive manufactured in 1944 by ALCO, with serial number 72052 and Kentucky and Tennessee Railway number 103.
- (d) One diesel locomotive manufactured in 1949 by ALCO, with serial number 77816 and Kentucky and Tennessee Railway number 104.

CERTIFICATE

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COMMONWEALTH OF KENTUCKY

COUNTY OF JEFFERSON

INTERSTATE COMMERCE COMMISSION

I, a notary public in and for the state and county aforesaid, hereby state and affirm that I have previously compared the attached copy of the Mortgage and Security Agreement dated May 23, 1984 between Kentucky and Tennessee Railway, Inc. and Citizens Union National Bank and Trust Company with the counterpart execution original of that document forwarded to the Interstate Commerce Commission under cover of the letter from Mr. John Penn dated May 23, 1984, and that the copy enclosed is complete and identical in all respects with the original document.

Signature of Notary Public:

Jeanette M. Goldstein My commission expires: 119